

Public Prosecutor v Chung Chung Kiang & Ors

A

HIGH COURT (KUCHING) — CRIMINAL TRIAL NO 45–08 OF
2005-II

DAVID WONG J

11 JANUARY 2008

B

Evidence — Burden of proof — Prima facie case — Whether maximum evaluation of evidence called for — Whether court ought to convict if accused remains silent — Whether beyond reasonable doubt to apply at end of prosecution's case

C

The first and fifth accused persons were charged with murder. The sixth accused was charged with abetment of murder. The High Court had to decide whether a prima facie case had been made out against all accused.

D

E

Held:

- (1) In applying the maximum evaluation test as propounded in *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393, the court must be ready to convict if the accused elects to exercise his statutory right to remain silent. The court must take into consideration that it cannot convict if the prosecution has not proven its case beyond reasonable doubt. Logically, the court has no alternative but to apply the beyond reasonable doubt standard at the end of the prosecution case (see para 6).
- (2) In the instant case, the High Court was bound by the doctrine of binding precedent and was obliged to apply the maximum evaluation test. Applying the said test, the High Court would find no prima facie case against the third to sixth accused persons. As against the first and second accused, the court would find a prima facie case on an amended charge under s 302 read with s 34 of the Penal Code. Therefore the court would discharge and acquit the third to sixth accused persons but call upon the first and second accused to enter their defence to the charge as amended by the court (see paras 9 & 47–49).

F

G

H

I

Obiter:

- (1) Applying the beyond reasonable doubt standard at the end of the prosecution case cannot be correct as the words 'prima facie' would then have the same meaning as the words 'beyond reasonable doubt'.

- A However, Parliament has always treated the two phrases as having different meanings. This is evident in ss 180 and 182A of the Criminal Procedure Code ('CPC') (see paras 6–7(i)).
- B (2) If the maximum evaluation test is correct, then the statutory right to remain silent provided under s 173 of the CPC would be a meaningless right. If it was meaningless, then Parliament would have amended s 173 of the CPC to take away that right. The courts in the country since the adoption of the maximum evaluation approach at the end of the prosecution's case, have informed the accused that he or she would be convicted if he or she remained silent. This in effect has rendered the statutory right of silence of an accused meaningless. It has also in effect prevented the court from making any favorable inference from the accused's choice to remain silent. This could not be right (see para 7(ii)).
- C
- D (3) The maximum evaluation approach as it is understood today does not reflect the intention of Parliament when s 180 was amended in 1997. Parliament's intention, was to restore the minimal evaluation principle as enunciated by the Privy Council in the landmark case of *Haw Tua Tau* [1981] 3 All ER 14, and to nullify the effect of the Federal Court judgment in *Arulpragasam Sandaraju v Public Prosecutor* [1997] 1 MLJ 597, which enunciated the maximum evaluation principle. The minimal evaluation approach would require the court at the end of the prosecution's case to embark on a minimal evaluation of the evidence and should the accused remain silent, the court would then evaluate the evidence again to determine whether the prosecution had proven its case beyond reasonable doubt. The minimal evaluation approach would enable the presiding judicial officer in a trial to call for the accused to enter his or her defence upon prima facie evidence being adduced and then acquit and discharge even when the accused remains silent and calls no evidence if the judicial officer is not satisfied that the charge has been established beyond reasonable doubt by the prosecution (see para 8).
- E
- F
- G

[Bahasa Malaysia summary]

- H Tertuduh pertama dan kelima telah dituduh kerana membunuh. Tertuduh keenam telah dituduh kerana bersubahat dengan pembunuhan itu. Mahkamah Tinggi perlu memutuskan sama ada terdapat kes prima facie terhadap kesemua tertuduh.
- I

Diputuskan:

- (1) Dalam menggunakan ujian penilaian maksimum seperti yang

dinyatakan dalam kes *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393, mahkamah perlu bersedia untuk membuat sabitan jika tertuduh memilih untuk menggunakan hak statutori untuk berdiam diri. Mahkamah hendaklah mengambilkira bahawa ia tidak boleh membuat sabitan jika pihak pendakwaan tidak membuktikan kesnya melampaui keraguan munasabah. Secara logik, mahkamah tiada alternatif tetapi untuk menggunakan standard melampaui keraguan munasabah di akhir kes pendakwaan (lihat perenggan 6).

A

B

- (2) Dalam kes ini, Mahkamah Tinggi terikat oleh doktrin pra syarat dan wajib menggunakan ujian penilaian maksimum. Dengan menggunakan ujian tersebut, Mahkamah Tinggi tidak akan mendapati kes prima facie terhadap tertuduh ketiga hingga keenam. Terhadap tertuduh pertama dan kedua, mahkamah akan mendapati kes prima facie pada pertuduhan pindaan di bawah s 302 dibaca bersama s 34 Kanun Keseksaan. Oleh itu mahkamah akan melepaskan dan membebaskan tertuduh ketiga hingga keenam tetapi memanggil; tertuduh pertama dan kedua untuk memasuki pembelaan mereka terhadap pertuduhan seperti yang dipinda oleh mahkamah (lihat perenggan 9 & 47–49).

C

D

Obiter:

E

- (1) Dengan menggunakan standard melampaui keraguan munasabah di akhir kes pendakwaan adalah tidak betul kerana perkataan-perkataan 'prima facie' akan mempunyai maksud sama dengan perkataan-perkataan 'beyond reasonable doubt'. Walau bagaimanapun, Parlimen sentiasa menganggap kedua-dua ungkapan tersebut mempunyai maksud yang berbeza. Ini jelas dalam ss 180 dan 182A Kanun Prosedur Jenayah ('KPJ') (lihat perenggan 6–7(i)).

F

- (2) Jika ujian maksimum tersebut adalah betul, maka hak statutori untuk berdiam diri yang diperuntukkan di bawah s 173 KPJ merupakan hak yang tidak bermakna. Jika ia tidak bermakna, maka Parlimen perlu meminda s 173 KPJ untuk mengambil hak itu. Mahkamah dalam negara ini sejak menggunakan pendekatan penilaian maksimum di akhir kes pendakwaan, telah memberitahu tertuduh bahawa dia akan disabitkan jika dia berdiam diri. Ini akhirnya menjadikan hak statutori tertuduh untuk berdiam diri tidak bermakna. Ia juga akhirnya menghalang mahkamah membuat apa-apa inferens yang positif dari pilihan tertuduh untuk berdiam diri. Ini adalah tidak wajar (lihat perenggan 7(ii)).

G

H

- (3) Pendekatan penilaian maksimum seperti yang difahami kini tidak menggambarkan niat Parlimen apabila s 180 dipinda pada tahun 1997. Niat Parlimen, adalah untuk mengembalikan prinsip penilaian seperti yang dinyatakan oleh Privy Council dalam kes penting *Haw Tua Tau* [1981] 3 All ER 14, dan untuk membatalkan kesan penghakiman

I

- A** Mahkamah Persekutuan dalam *Arulpragasam Sandaraju v Public Prosecutor* [1997] 1 MLJ 597, yang menyatakan tentang prinsip penilaian maksimum. Pendekatan penilaian minima menghendaki mahkamah di akhir kes pendakwaan untuk menggunakan penilaian minima ke atas keterangan dan sekiranya tertuduh berdiam diri,
- B** mahkamah akan seterusnya menilai keterangan itu sekali lagi untuk menentukan sama ada pihak pendakwaan telah membuktikan kesnya melampaui keraguan munasabah. Pendekatan penilaian minima akan membolehkan pegawai kehakiman yang bersidang dalam perbicaraan untuk memanggil tertuduh untuk memasuki pembelaannya
- C** berdasarkan keterangan prima facie yang dikemukakan dan kemudian dibebaskan dan dilepaskan meskipun tertuduh berdiam diri dan tidak memberi keterangan jika pegawai kehakiman tidak berpuas hati bahawa pertuduhan itu telah dibuktikan melampaui imbalan keraguan oleh pihak pendakwaan (lihat perenggan 8).]
- D**

Notes

For a case on burden of proof of prima facie case, see 7(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 545.

E Cases referred to

- Arulpragasam Sandaraju v PP* [1997] 1 MLJ 597 (refd)
Balachandran v PP [2005] 2 MLJ 301 (refd)
Davies v Director of Public Prosecutions [1954] 1 All ER 507 (refd)
Francis Antonysamy v PP [2005] 3 MLJ 389 (folld)
F *Haw Tua Tau* [1981] 3 All ER 14 (refd)
Looi Kow Chai & Anor v PP [2003] 2 MLJ 65 (refd)
Mohd Abbas bin Danus Baksan v PP [2006] 5 MLJ 332 (refd)
Pavone v PP [1984] 1 MLJ 77 (refd)
PP v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393 (refd)
G *PP v Sidek bin Abdullah* [2006] 3 MLJ 357 (refd)
R v Baskerville [1916] 2 KB 658 (refd)
State of Punjab v Sanjiv Kumar & Ors Case No 822–825 of 2001 (refd)
Tan Too Kia v PP [1980] 2 MLJ 187 (refd)

H Legislation referred to

- Criminal Procedure Code ss 173, 180, 182A
Evidence Act 1950 s 114(f)
Penal Code ss 300(a), 300(c), 300(d), 302

- I** *Steve Ritikos* (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.
Albert Tang (Chew Jugah Wan Ullok & Co) for the first and third accused.
Roger Chin (Roger Chin & Co) for the second accused.
KC Wong (KC Wong & Associates) for the fourth accused.

Lim Lian Kee (LL Kee & Co) for the fifth accused.

A

John Shek (John Shek Sigar Wee Yee & Co) for the sixth accused.

David Wong J:

INTRODUCTION

B

[1] Six male accused are charged with the death of Tan Kok Kiang ('deceased'). The charge against the first five accused is for the offence of murder which carries the mandatory death sentence by hanging. The six accused are alleged to have met on 17 February 2005, at about 12pm–3pm, at No 129, Taman Intersar, Lorong Rock 2M, Kuching, Sarawak ('the alleged place'), to plan and execute their common object to commit murder by causing the death of the deceased. The sixth accused is charged with the abetment of the murder of the deceased. He is alleged to be the person who organised the attack against the deceased. According to the prosecution, at the alleged place, the sixth accused gave an ang pow to the second accused to give to the deceased at a coffee shop at Batu Kawa for the purpose of identifying the deceased to the other accused as the person to be attacked. Sometime around 3pm, they all left for a coffee shop at Batu Kawa where the second accused was alleged to have identified the deceased by giving the ang pow to the deceased. A few minutes after that act, the deceased was chased by the accused and some other persons which ended inside a wooden double storey detached house where the deceased sustained various serious wounds to the body and later succumbed to the injuries resulting in his death.

C

D

E

F

[2] The names of the accused are as follows:

- (1) Chung Chung Kiang (first accused);
- (2) Lee Wee Koon (second accused);
- (3) Bernard Jong Swee Guan (third accused);
- (4) Boon Wei Nyiap (fourth accused);
- (5) Lee Soon Fatt (fifth accused);
- (6) Chen Kian Fatt (sixth accused).

G

H

[3] The issues in this case are as set out below.

I

WHAT IS A PRIMA FACIE CASE?

[4] The law requires me to call for the accused's defence if I find that a prima facie case has been made out by the prosecution at the end of its case.

- A Gopal Sri Ram JCA (sitting as a Federal Court judge) in *Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393 gave the following guidance:

For the guidance of the courts below, we summarise as follows the steps that should be taken by a trial court at the close of the prosecution's case:

- B (i) the close of the prosecution's case, subject the evidence led by the prosecution in its totality to a maximum evaluation. Carefully scrutinise the credibility of each of the prosecution's witnesses. Take into account all reasonable inferences that may be drawn from that evidence. If the evidence admits of two or more inferences, then draw the inference that is most favorable to the accused;
- C (ii) ask yourself the question: If I now call upon the accused to make his defence and he elects to remain silent am I prepared to convict him on the evidence now before me? If the answer to that question is 'Yes', then a prima facie case has been made out and the defence should be called. If the answer is 'No' then, a prima facie case has not been made out and the accused should be acquitted;
- D (iii) after the defence is called, the accused elects to remain silent, then convict;
- E (iv) after defence is called, the accused elects to give evidence, then go through the steps set out in *Mat v Public Prosecutor* [1963] MLJ 263.

- F [5] The language used by His Lordship cannot be any clearer. But with respect, when I apply the test in my mental exercise I find myself muddled with difficulties which I now set out the reasons why. In approaching this issue I start with two basic principles of criminal law and they are these. Firstly, no person can be convicted of a crime unless the court is fully satisfied that the prosecution has proven its case beyond reasonable doubt. Secondly,
- G the phrase 'prima facie case' cannot and do not have the same meaning as the phrase 'beyond reasonable doubt'.

- H [6] In applying the maximum evaluation test propounded above, I must be ready for conviction if the accused elects to exercise his statutory right to remain silent. In my mental exercise, I must take into consideration that I cannot convict if the prosecution had not proven its case beyond reasonable doubt. Thus logically I am left with no alternative but to apply the beyond reasonable doubt standard at the end of the prosecution case.

- I [7] Can this be correct? With humility my answer is in the negative and my reasons are as follows:
- (i) If it is correct, then the words 'prima facie' would have the same meaning as the words 'beyond reasonable doubt'. That cannot be so as

Parliament had in s 180 of the CPC used 'prima facie' and not 'beyond reasonable doubt' as the threshold test for calling the accused to enter his defence. There is no doubt in my mind that Parliament has always treated the two phrases as having different meaning. This is evident in ss 180 and 182A of the Criminal Procedure Code ('CPC') which states as follows:

180 Procedure after conclusion of case for prosecution

- (1) When the case for the prosecution is concluded, the Court shall consider whether the prosecution has made out a prima facie case against the accused.
- (2) If the Court finds that the prosecution has not made out a prima facie case against the accused, the Court shall record an order of acquittal.
- (3) If the Court finds that a prima facie case has been made out against the accused on the offence charged the Court shall call upon the accused to enter on his defence.
- (4) For the purpose of this section, a prima facie case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would warrant a conviction.

182A Procedure at the conclusion of the trial

- (1) *At the conclusion of the trial*, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved *its case beyond reasonable doubt*.
- (2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.
- (3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal.

In s 182A of the CPC, the operative words are 'at the conclusion of the trial' which in my view must also mean the stage when the accused elects to remain silent after defence is called. Once that right of silence is exercised by the accused that would signal the conclusion of the trial which would then require the court only to convict when the prosecution had proved its case beyond reasonable doubt.

- A (ii) Further if it is correct, then the statutory right to remain silent provided for in s 173 of the CPC is a meaningless right. If it is meaningless, then Parliament would have amended s 173 of the CPC to take away that right. From my knowledge, the courts in the country have since the adoption of maximum evaluation approach had at the end of the prosecution's case informed the accused that he or she would be convicted if he or she remained silent. This in effect has rendered the statutory right of silence of an accused meaningless. It has also in effect prevented the court from making any favorable inference from the accused's choice to remain silent. That with respect cannot be right.
- B
- C

- [8] It is my humble view that the maximum evaluation approach as it is understood today does not reflect the intention of Parliament when s 180 was amended in 1997. Parliament's intention, in my view, is what the learned DPP in the case of *Public Prosecutor v Sidek bin Abdullah* [2006] 3 MLJ 357 contended and that was that the amendment in 1997 was made with the intention of restoring the minimal evaluation principle as enunciated by the Privy Council in the landmark case of *Haw Tua Tau* [1981] 3 All ER 14, and nullifying the effect of the Federal Court judgment in *Arulpragasam Sandaraju v Public Prosecutor* [1997] 1 MLJ 597, which enunciated the maximum evaluation principle. What this means is that the court at the end of the prosecution's case will embark on minimal evaluation of the evidence and should the accused remain silent, the court will then evaluate the evidence again to determine whether the prosecution had proven its case beyond reasonable doubt. Hence there is nothing illegal if a presiding judicial officer in a trial call for the accused to enter his or her defence upon prima facie evidence being adduced and then acquit and discharge even when the accused remains silent and calls no evidence if he or she is not satisfied that the charge has been established beyond reasonable doubt by the prosecution (see Edgar Joseph J (as he then was) in *Pavone v Public Prosecutor* [1984] 1 MLJ 77).
- D
- E
- F
- G

- [9] The learned DPP's contention was upheld by Hishamudin Yunus J in his detailed and well researched judgment. But like me, he was bound by the doctrine of binding precedent and could not accede to the learned DPP's contention. The learned judge proceeded to apply the maximum evaluation test as set out in *Looi Kow Chai & Anor v Public Prosecutor* [2003] 2 MLJ 65 and *Balachandran v Public Prosecutor* [2005] 2 MLJ 301 which in his words are as follows:
- H

- I The essence of the maximum evaluation principle (which goes hand in hand with the principle of provisional beyond reasonable doubt) as advocated by *Arulpragasam* and *Khoo Hi Chiang* is this.

The maximum evaluation principle imposes upon the court, at the close of the case for the prosecution, the duty to thoroughly scrutinise the prosecution evidence, including a rigorous assessment of the accuracy and credibility of the prosecution

witnesses, and to make a determination as to whether or not the prosecution has *provisionally* (the word 'provisionally' is not used by the majority judgment in *Arulpragasam* but I am deliberately using the word 'provisionally' here for the sake of clarity as the finding of the court at this stage has to be provisional since the defence has yet to be called and heard) *proven its case beyond reasonable doubt*, before calling the accused to enter his defence. If the prosecution, at the close of the case for the prosecution, fails to provisionally prove its case beyond reasonable doubt, then, the court must acquit the accused. On the other hand, if the court after having made a maximum evaluation of the prosecution evidence is of the view that the prosecution has provisionally proved its case beyond reasonable doubt, and the accused when called upon to enter his defence, elects to remain silent and to call no evidence, the court shall automatically record a conviction. The court will not invite his counsel to resubmit on whether or not there is a case to answer; nor will the court re-evaluate the prosecution evidence that has been adduced up to the conclusion of the prosecution case.

(Emphasis added.)

[10] One can see that His Lordship there had applied the 'beyond reasonable doubt' test despite his use of the word 'provisional'. I will now apply the above test to the case at hand.

[11] For me to call the defence, the prosecution must prove the following ingredients:

- (1) Commission of an offence by any member of an unlawful assembly congregated at the alleged place.
- (2) Such offence must have been committed in execution of the common object of that assembly; or must be such as the members of that assembly knew to be likely to be committed (as per *Ratanlal & Dhirajlal's Law of Crimes*).

INGREDIENT 1

[12] The alleged offence in this case is one of murder as provided for in s 302 of the Penal Code which requires me to discuss the following issues:

Whether Tan Kok Kiang is the deceased person?

[13] The evidence on this is straight forward and uncontroverted. The first identification of the deceased as Tan Kok Kiang was by PW8 (the attendant at the Emergency Department at Normah Medical Center) when the deceased was brought there by PW13 who knew him as 'Sam Suk'. This identification was confirmed by the wife of the deceased (PW12) when she went there after being informed that something had happened to her

- A husband. Another identification was made by PW12 at the Sarawak General Hospital Mortuary in the presence of Dr Jamil Dolkadir, the pathologist (PW4) and the investigating officer, Chief Inspector Soliment (PW26).

Did Tan Kok Kiang die as a result of injuries sustained by him?

B

[14] On this issue, the main witness is PW4, the pathologist who did the post mortem on the deceased. His academic qualifications consist of a medical degree and post graduate degree on pathology from the University of Malaya. At the time of the post mortem he was attached to Sarawak General Hospital as Head of the Pathology Department. He has worked in the field of pathology for some 19 years and conducted over 1,000 post mortems. He is a member of Malaysian Academy of Medicine, Chapter Pathology. These credentials and the fact that he had testified in court on numerous occasions, in my view, makes him a more than qualified witness to testify on the cause of death of the deceased.

D

- E [15] The injuries on the deceased are set out by the learned DPP's submission which are not disputed and could be summarised by saying that the deceased had sustained multiple wounds to the body and the cause of death was due to a cut at the left neck cutting carotid vessels, causing hypovolaemic shock.

- F [16] Taking into consideration the testimony of PW4 and the photographic evidence of the injuries sustained by the deceased, I am left with no reasonable doubt that the deceased died as a result of the injuries sustained by him.

Were the injuries of Tan Kok Kiang caused by the acts of the accused persons?

G

[17] The crucial evidence is what transpired at the double storey detached house at Batu Kawa (detached house). I start off here with the evidence of the owner of the detached house (PW14) who must have and understandably had a Chinese New Year which he will never forget. What happened on that fateful day was this. His car and some windows of his house were smashed by a group of people who had chased the deceased from the coffee shop at the old Batu Kawa town. And when he tried to enter his house, he saw three unidentified men climbing out of a window. He also saw a man with injuries to his neck and blood covering his body walking out from his front door. PW14's mother and daughter were said to be inside the house when the assault was alleged to have taken place. However they were not called as witnesses by the prosecution which led the counsel for the accused to contend that there is no direct visual evidence as to how the assault had taken place and the circumstantial evidence are not strong enough to warrant their

H

I

defence to be called. Mr Albert Tang, counsel for the first and third accused also urged the court to draw an adverse inference against the prosecution pursuant to s 114(f) of the Evidence Act 1950 for failing to call PW14's mother and daughter to testify. I declined that offer for the reason that the prosecution is entitled to call whatever evidence they deem fit. It is not for them to form a view whether the evidence adduced are adequate but for the court to determine.

[18] However I agree that the prosecution's case on this issue is one of circumstantial evidence. And what amounts to adequate circumstantial evidence is set out by Gopal Sri Ram JCA in *Mohd Abbas bin Danus Baksan v Public Prosecutor* [2006] 5 MLJ 332:

Now, it is true that the evidence for the prosecution was largely, if not wholly, circumstantial. And it is learned counsel's complaint that the learned judicial commissioner failed to direct himself that for an accused to be convicted on the basis of circumstantial evidence. With respect, we find no merit in this criticism. In *Mohd Affandi bin Abdul Rahman & Anor v Public Prosecutor* [1998] 1 MLJ 537 this court said (at p 582):

We do not consider that any particular form of words is necessary to convey to the minds of the jury the burden that lies upon the prosecution when it relies on circumstantial evidence to establish its case. The proposition that circumstantial evidence must, when taken together, irresistibly lead to the conclusion that the accused committed the offence is merely another way of saying that the prosecution must prove its case beyond a reasonable doubt. This is because any gap in the circumstances relied upon or an interpretation of them that reasonably leads to an alternative conclusion inconsistent with guilt would result in the prosecution not having proved its case beyond a reasonable doubt, (see *Jayaraman & Ors v Public Prosecutor* [1982] 2 MLJ 306).

In his judgment the learned judicial commissioner said (at p 173):

I was of the considered view that the matters that I have referred to earlier, taken collectively, in the circumstances constituted a prima facie case against the accused that warranted the calling of the accused's defence to answer the charge against him. The behaviour and conduct of the accused was not, to my mind, consistent with that of a person who had nothing to hide. Thus, I called for the accused's defence after I had reminded myself, and was mindful that there are no eye witnesses and in that sense the evidence against the accused is circumstantial evidence. In my view the cumulative effect of all the evidence led to the irresistible conclusion that it was the accused who committed the crime, see *Sunny Ang v Public Prosecutor* [1966] 2 MLJ 195).

There you have it. The learned commissioner was very much alive to the fact that the case against the appellant rested on circumstantial evidence. And he used the time honoured formula 'irresistible conclusion' when discussing the legal test to be applied to such evidence.

A [19] I now examine the circumstantial evidence.

(i) PW15 (Phua Yan Kuan)

B [20] PW15's evidence was this. On 17 February 2005, at around 2pm, he,
C Chung Min Jan (PW21) and Chang Tze Herng (PW16) went to a coffee
shop situated somewhere before the Batu Kawa bridge ('first coffee shop') in
a car (blue Kancil — QKQ 657) driven by PW21 for something to eat.
D When he arrived there he saw at the first coffee shop a group of people
numbering more than 10 people. Among the group, he knew the first accused
and second accused, both of whom were identified by PW15 in court. Then
E he was approached by the second accused for the purpose of borrowing his
blue Kancil car to fetch second accused's friend. After getting the consent
from PW15, the second accused used the car and brought back one Lau Pee
F Ho to the first coffee shop. Later on in that afternoon, he was also asked by
the second accused to take two of his friends whom he could not recognise
to Batu Kawa old town as the second accused did not have enough cars. He
agreed to the second accused's request and he, PW16 and PW21 together
with the second accused's two friends went to the Batu Kawa old town in the
blue Kancil car driven by one of second accused's friends. When they arrived
there, the blue Kancil car was parked near a sea food restaurant called Kalok
(second coffee shop). The five of them remained in the blue Kancil car and
from there, PW15 saw the second accused gave an ang pow to an unidentified
man. Immediately after that he saw a group of people, (the same group he
saw at the first coffee shop) which included the first and second accused
chasing this unidentified man which ended at the detached house where this
group of people smashed a car and the windows of the house. He however
could not confirm whether the detached house is the same house as shown in
P8(a), which PW14, the owner, had testified is his house.

G [21] He also saw the first and second accused coming out of the detached
house. The first accused was bleeding and pressing one of his hands on the
other to stop the bleeding. As for the second accused he was holding a piece
of wood or iron rod. After the incident he was sent back home after declining
H to go Bau with the people in the blue Kancil car.

(ii) PW16 (Chang Tze Herng)

I [22] His testimony was this. He together with PW15 and PW21 went to
the first coffee shop on 17 February 2008 for something to eat. Contrary to
what PW15 said, a group of people came to the first coffee shop after they
had arrived there. Among the group he could not recognise any of them
except for Wilson Law Teck Yang (PW17). He denied that he had expected
the arrival of the group. He also confirmed that the second accused had

approached PW15 for the loan of the blue Kancil car to which consent was given by PW15. Then he, PW15, PW21 and two unidentified men left the place and went to the second coffee shop. I note here his evidence refer to one loan of the blue Kancil car from the second accused which is contrary to the evidence of PW15 who referred to two loans.

A

B

[23] At the second coffee shop, he also saw the second accused gave an ang pow to the deceased. He was about 15 meters away from where the second accused and the deceased sat. After that, a group of people chased the deceased. As for the second accused, he got into the green Kancil car and chased the deceased. PW15 also got into the blue Kancil car and followed the chase to the detached house. From there he testified that the last two persons who came out of the detached house were the first and second accused. The first accused was bleeding but he could not say whether the second accused was injured or not. After the incident at the detached house, the occupants except PW15 went to Bau in the blue Kancil car where they stopped at an empty house where the first accused gave him RM100 to buy chicken rice. There he noticed that the first accused's hands were injured. Later that evening of 17 February 2005 at around 5–6pm one Hadi Bin Bohtana (PW21) took them to his pub near the Bau lake. There were about 10 people at the pub and among these people were the first, second, fourth and fifth accused. At around 1am on 18 February 2005, they (meaning the same group at Hadi Pub) went to another pub at Bau. Nothing of any significance happened there as far as PW16 was concerned. He was later arrested by the police at Hadi's pub.

C

D

E

F

(iii) PW21 (Chung Min Jan)

[24] His evidence was this. On 17 February 2005, he together with PW15 and PW16 went to the first coffee shop and he like PW16 testified that a group of people came to the shop after they had arrived. He did not know any of the people in the group. However, he confirmed that it was the second accused who approached PW15 for the loan of the blue Kancil car. He like PW16 said that PW15 loaned the blue Kancil car only once and that was when the car was driven by one of the second accused's two friends to the second coffee shop. In the car was PW15, PW16, P21 and the second accused's two friends whom he did not know. He had testified that apart from his blue Kancil there were two other cars at the second coffee shop and they were a green Kancil car and a Hi Lux.

G

H

I

[25] At the second coffee shop, he saw the second accused and one Wilson Lau (PW17) sitting together with the deceased whom he knew as Sum Suk (third uncle). Like PW15 and PW16, he saw the second accused gave an ang pow to the deceased and shortly after that there was a chase by a group of

- A people. He was in the blue Kancil car which gave chase until a junction of a small road near the detached house where they were parked. He was with PW15 and PW16 and from there he heard a lot of noises caused by the breaking of glasses and people screaming. In respect of what transpired at Bau, his testimony was the same as that of PW16. In respect of deceased,
- B PW21 when shown P11(b) was able to identify the deceased as the Sum Suk he knew.

(iv) PW22 (Dominic a/l Hamidiah Dasun)

- C [26] This witness was attached to Bau Hospital emergency unit and had testified that on 18 February 2005 he had treated a person called Chung Chung Kiang, the first accused for laceration wounds on the right wrist. This evidence is corroborated by exh P93 the patient's slip bearing the first accused's name.

- D (v) PW3 (Lau Cheng Siew @ Low Cheng Siew)

- E [27] At the time of the commission of this crime, he was working as a chemist at the Department of Chemistry, Kuching for some 34 years. His qualification consists of a Bachelor of Science degree with honors in chemistry. He had attended two DNA profiling courses and conducted some 200 DNA analysis cases. He is also a member of the Institute of Chemistry Malaysia and had taken proficiency test with the Chemistry Department and corroborative testing service of the United State of America in Malaysia.
- F The machines used for his DNA analysis were thermal cycler and gene analyser which complied with accepted international standard. With those credentials and the manner in which he testified, I have no hesitation in accepting him as an expert witness and his evidence. The crucial findings of this witness are these:

- G *P38(b) — the second Accused shirt contained blood stains of the deceased*

Q: (witness shown P38 (b) — E23 and P59 — E44) did you do an analysis on P38 (b) bearing blood stains?

- H A: Yes, I also did DNA profiling on P59(c) and (d) which are blood specimen of Tan Kok Kiang

Q: What was your finding?

- I A: I found the DNA profile developed from the blood stains on the lower left portion of P38 (b) (T shirt) to match the DNA profile developed from the blood specimen labeled Tan Kok Kiang. It means that the blood stains found in the left portion of the T shirt (P38 (b)) could have originated from Tan Kok Kiang.

P59(c) — parang handle which contained the blood stain of the first accused and the deceased

Q: Did you do a DNA profiling on the blood specimen in P59(c) and (d) (E44)? **A**

A: Yes.

Q: What was the finding?

A: I found the DNA profiling on the bloodstains on the blade of parang [P45 (b)] to match with the DNA profile developed from the specimen in P59(c) and (d) labeled Tan Kok Kiang. **B**

Q: Please explain what that means?

A: If the DNA profile of the blood stains on the blade with the DNA profile of the specimen blood stated to belong to Tan Kok Kiang, there are 2 possibilities. One is that the bloodstains on the blade of the parang (P45 (b)) were contributed by Tan Kok Kiang. Two the bloodstains on the blade of the parang (P40(b)) were contributed by some other person who by coincidence has the same DNA profile as Tan Kok Kiang. And the probability of randomly selected person having this profile is 1 in 11.3 quintillion based on the Malaysian Chinese data base. **C**

Q: Could you refer to the appendix in P13 (B)? **D**

A: At page 3 of 6 on column no 2 labeled as E30 Bloodstains (blade) which is the profiling result for the blade of the parang [P45 (b)]. It matches the DNA profile of specimen blood at column 2 at page 4 of 6 (E44) label as 'Tan Kok Kiang'. **E**

The blood stains on the parang's handle [P45 (b)] matched with the DNA profile of specimen blood of P65 (b) and (c) [E50] label Chung Chung Kiang.

P43(b) — Right shoe (NIKE) belonging to the first accused contained blood stains of deceased

Q: (Witness referred to P43 (b) — E28) did you do an analysis on P45 (b) which is a pair of shoes? **F**

A: Yes, I did a DNA analysis on the right shoe (P43 (b)).

Q: Did you do a DNA profiling on the blood specimen in P59 (c) and (d) (E44)? **G**

A: Yes.

Q: What was the finding?

A: I found the DNA profiling on the bloodstains on the right shoe [P43 (b)] to match with the DNA profile developed from the specimen blood in P59(c) and (d) labeled Tan Kok Kiang. **H**

Q: Please explain what that means?

A: If the DNA profile of the blood stains on the right shoe match with the DNA profile of the specimen blood stated to belong to Tan Kok Kiang, there are 2 possibilities. One is that the bloodstains on the right shoe (P43 (b)) were contributed by Tan Kok Kiang. Two the bloodstains on the right shoe (P43 (b)) were contributed by some other person who by coincidence has the same DNA **I**

- A** profile as Tan Kok Kiang. And the probability of randomly selected person having this profile is 1 in 11.3 quintillion based on the Malaysian Chinese data base.
- P38(b) — second accused T-shirts containing the blood stains of the first accused*
- B** Q: (Witness referred to P38 (b) — E23) did you do an analysis on P38 (b) which is a T Shirt?
- A: Yes, this morning I gave evidence on the bloodstains on the lower front left side of the T Shirt. Now I am proceeding with the lower front right side of the T Shirt.
- Q: Did you do a DNA blood analysis on specimen blood P65 (b) and (c) [E50]?
- C** A: Yes.
- Q: What was your finding?
- A: I found the DNA profile developed from the lower front right side of the T Shirt (P38(b)) to match with the DNA profile developed from blood specimen P65(b) and (c) labeled Chung Chung Kiang.
- D** Q: What does that mean?
- A: There are 2 possibilities. One the bloodstains on the lower front right side of the T shirt (P38 (b)) had originated from Chung Chung Kiang. Second is that the bloodstains originated from a person who by coincidences had the same DNA profile as Chung Chung Kiang. And the probability of a randomly selected unrelated individual having this DNA profile is approximately 1 in 244 quadrillion calculated based on the Malaysian Chinese data base.
- P47(b) — tissue found at the empty house contains bloodstains of the first accused*
- F** Q: (Witness referred to P47 (b) — E32) did you do an analysis on P47 (b) which is a tissue paper?
- A: Yes.
- Q: Did you do DNA profile on blood specimen in P65(b) and (c) which is E50?
- G** A: Yes.
- Q: What was your finding?
- A: I found the bloodstains on the tissue paper (P47 (b)) to match the DNA profile of the blood specimen in P65(b) and (c) which is E50 labeled Chung Chung Kiang.
- H** Q: What does that mean?
- A: There are 2 possibilities. One is the bloodstains on the tissue paper originated from Chung Chung Kiang. Second the bloodstains on the tissue paper is from a person who is by coincidences has the same DNA profile as Chung Chung Kiang and the probability of randomly selected unrelated individual having this DNA profile is 1:244 quadrillion as calculated based on the Malaysian Chinese data base.
- I**

[28] The evidence of this witness remained unshaken by the cross-examination of counsel. A

(vi) PW5 (Johnson Asip)

[29] He was the medical laboratory attendant at the Sarawak General Hospital who took blood samples from the first, second, third, fourth, and fifth accused. He has a Diploma in Medical Technology from the Institute Medical Research in Kuala Lumpur. This diploma signifies that he has had training in collecting blood sample from people for analysis. His testimony in my view is uncontroversial and in fact corroborated by PW7, the police officer who brought the five accused to the Sarawak General Hospital — Specialist Clinic Laboratory and PW26 (the investigation officer) who prepared the forms for PW7 to take to the Sarawak General Hospital for taking blood samples of the five accused. B
C
D

(vii) PW17 (Wilson Law Teck Yang)

[30] His testimony was this. He testified that on 17 February 2005 at about 1pm he and the fourth accused (Boon Wei Nyiap) went to the alleged place. There he saw a few people outside the house and heard that they wanted to give away ang pow. The people he recognised there were the second accused, fifth accused and the sixth accused. He and the fourth accused at all times remained outside the house and hence they could not hear what was discussed inside the house as the door was closed. However he saw the sixth accused gave an ang pow to the second accused. Thereafter he, the fourth accused, the second accused and two unidentified men entered into a green Kancil car and went to the first coffee shop. There he said that he met his former school mates who were PW15 (Phua Yan Kuan), PW16 (Chang Tze Herng) and PW21 (Chung Min Jan) and had a drink with them. He also saw the second accused approached PW15 to borrow PW15's blue Kancil car. After that they (PW17, fourth accused, second accused, and two unidentified men of Dayak origin) left for the second coffee shop in the green Kancil car. PW15's blue Kancil car consisting of PW15, PW16, PW21 and two other unidentified persons also went to the second coffee shop. A Hi Lux carrying the first and fifth accused and some others whom he could not recognise also went to the second coffee shop. E
F
G
H

[31] As for what happened at the second coffee shop, this is what he saw: The second accused gave one ang pow to the man unknown to him in the coffee shop. At that time he was with the fourth accused standing next to the green Kancil car. After giving the ang pow, the second accused joined the fourth accused and PW17 in the green Kancil car and together with the Hi Lux car chased the deceased until they stopped at a road junction near the I

- A detached house. From there he observed that the second accused, the fourth accused, the two Dayaks, Hadi (PW21) and some others whom he can't remember walked towards the detached house. There he heard the sound of broken glasses. After that he saw the two Dayaks and fourth accused ran back to the green Kancil car which was driven by one of the Dayaks. The condition of the fourth accused after he returned was normal. As for the second accused he pointed at his head and some other parts of his body which he cannot remember and also told them those parts of his body was bleeding. After that PW17, the fourth accused, the second accused and the two Dayaks went to an empty house at Bau. PW17 and the fourth accused together with the two Dayaks stayed for a while and then went back to Kuching. At about 6.30pm, the two Dayaks took PW17 and the fourth accused back to a pub near the Bau lake. The people present there were Hadi (PW21), second accused, fifth accused, first accused, third accused, fourth accused, PW16, PW15 and the two Dayaks. They were gambling. At around 1am on 18 February 2005 they went to a pub at Bau Bazaar. There he saw the sixth accused (Chen Kian Fatt) looking for the first and second accused. However he was unable to hear what transpired between them. Later that morning they (PW15, PW16, PW17, PW21, first to sixth accused) except the two Dayaks went back to Hadi's pub and there PW17 was arrested.

E (viii) PW19 (Hadi Bothana)

- [32] This witness by his admission was sleeping at the alleged place which belonged to the sixth accused. He had testified that at around noon of the 17 February 2005 the first accused, second accused, third accused, fourth accused, fifth accused and sixth accused were at that house. However he was not aware of what was discussed between the sixth accused, first accused and second accused except that he saw the sixth accused gave the second accused an ang pow. From that house, they excluding the sixth accused went in two cars, one Hi Lux driven by him and another Kancil car to the first coffee shop. After having something to eat there, they proceeded to the second coffee shop. There he saw the second accused gave one ang pow to a man who was seated in that coffee shop. After the second accused returned to the car, they all got out from the car and chased the man who received the ang pow. However PW19, half way through the chase, returned back and used his Hi Lux to follow them until he parked the car near the detached house. There he saw an injured and bleeding first accused running back to his car. He was also carrying a knife measuring about two feet long. From there they (PW19, first to fifth accused) went to an empty house at Bau which belonged to him. There he instructed his relative to buy some medicine. The knife was left in one of the rooms in the house but he could not remember who left it there. At about 6.30pm on the same day, they went to a pub situated at Bau Lake. At about 7pm, the sixth accused came and told PW19, first accused, second

accused and fifth accused that the man was dead. Three days after his arrest, he went to the empty house and showed the police where the knife was placed. As for the reason for beating up the deceased, he was told by the sixth accused that they were fighting for their territory.

A

EVALUATION OF THE EVIDENCE

B

[33] Mr Albert Tang, counsel for the first and third accused, contended that the evidence of PW15, PW16, PW17, PW19 and PW21 are evidence of accomplices. The test as to who is an accomplice is set out in *Davies v Director of Public Prosecutions* [1954] 1 All ER 507 as this:

C

The following persons, if called as witnesses for the prosecution, have been treated as falling within the category of accomplice for the purpose of the rule that a judge ought to warn juries about the evidence of an accomplice:

D

- (1) On any view, persons who are *participes criminis* in respect of the actual crime charged, whether as principals or accessories before or after the fact (in felonies) or persons committing, procuring or aiding and abetting (in the case of misdemeanours). This is the natural and primary meaning of the term 'accomplice'. But in two cases, persons falling strictly outside the ambit of this category have, in particular decisions, been held to be accomplices for the purposes of the rule, viz:

E

- (2) Receivers have been held to be accomplices of the thieves from whom they receive goods on a trial of the latter for larceny.

F

- (3) When X has been charged with a specific offence on a particular occasion, and evidence is admissible, and has been admitted, of his having committed crimes of this identical type on other occasions, as proving system and intent and negating accident; in such cases the court has held that in relation to such other similar offences, if evidence of them were given by parties to them, the evidence of such other parties should not be left to the jury without a warning that it is dangerous to accept it without corroboration.

G

H

[34] In *Francis Antonysamy v Public Prosecutor* [2005] 3 MLJ 389 the Federal Court referred to the just cited case and held as follows (at p 409):

... In *Davies v Director of Public Prosecutions* [1954] 1 All ER 507 it was held that persons who are *particeps criminis* in respect of the actual crime charged, whether as principals or accessories before or after the fact, are accomplices. In explaining the role played by these categories of persons the *Law of Evidence* by Woodroffe and Amir Ali (16th Ed) (Vol 4) says at pp 3434–3435:

I

- A** A principal of the first degree is one who actually commits the crime; a principal of the second degree is a person who is present and assists in the perpetration of the crime; an accessory before the fact is one who counsels, incites, connives at, encourages or procures the commission of a crime; everyone is an accessory after the fact to a felony who, knowing a felony to have been committed by another, receives, comforts or assists him in order to enable him to escape from punishment; or rescues him from arrest for the felony; or having in custody for the felony, intentionally and voluntarily suffers him to escape; or apposes his apprehension.

- C** [35] Applying the test set out above I have no hesitation in finding that only PW19 fits into the above description. From the evidence especially his presence at alleged place, taking part in the chase with the first accused at the detached house and the gathering at his properties (empty house and pub) at Bau, one can comfortably conclude that he was an accomplice. That being the case, I must remind myself as to how his evidence should be treated and I can do no better than refer to *Evidence, Practice and Procedure* (3rd Ed), where Augustine Paul FCJ, the author, after referring to the celebrated English Criminal Court of Appeal case of *R v Baskerville* [1916] 2 KB 658, said this:

The rules laid down by this judgment may be briefly stated thus:-

- F** (1) The uncorroborated evidence of an accomplice is admissible, and a conviction founded on such evidence is not illegal.
- (2) But it is a rule of practice virtually equivalent to a rule of law that the presiding judge must warn the jury of the danger of convicting on such evidence.
- G** (3) It is also his duty to tell them that nevertheless they can legally convict on such evidence.
- (4) When it appears that the judge has not given the required warning, the Court of Appeal will quash the conviction.
- H** (5) One accomplice cannot corroborate another.
- (6) The corroboration must be evidence which implicates the accused. Evidence tending merely to show that a crime has been committed is insufficient.

- I** [36] Not only is this witness an accomplice, he had admitted in cross-examination that he had been asked by the police to be a witness and if he did not become one he would be rearrested. This amounts to an inducement to testify and unfortunately this was not rebutted by the

investigation officer (PW26) in court. Furthermore, this inducement may explain the many 'I cannot remember' answer given by him in court.

A

[37] As for PW17, though he is not considered as an accomplice, his evidence in my view must be treated with great care. He had under cross-examination said that he was requested by PW26 to cooperate with the police otherwise he would be charged in court, though he had explained later in his evidence that he was only asked by PW26 to tell the truth in court. Be that as it may, the prosecution never asked PW26 whether he had made such a threat to PW17. The consequence of not calling rebuttal evidence is discussed in the case of *Tan Too Kia v Public Prosecutor* [1980] 2 MLJ 187. Further I had throughout his testimony observed his demeanors.

B

C

[38] In short this court will rely on the evidence of PW17 and PW21 in its deliberation only where their evidence are corroborated.

D

[39] As far as who had caused the injuries to the deceased, I find that there are no evidence which link the third, fourth, fifth and sixth accused to the injuries of the deceased. The evidence in my view only point to the first and second accused and they are as follows:

E

- (1) they were seen by PW15, PW16, PW17, and PW21 to be coming out of the detached house carrying weapons and covered with blood;
- (2) the evidence was corroborated by the DNA evidence given by PW3;
- (3) the evidence are also corroborated by the evidence of PW16 and PW21 as to what had happen at Bau.

F

[40] Accordingly, I find that the first and second accused had caused the injuries to the deceased.

G

In inflicting those injuries upon Tan Kok Kiang, did the first and second accused either

- (a) cause them with the intention of causing death on Tan Kok Kiang; or
- (b) cause them with the intention of causing such bodily injuries on Tan Kok Kiang as the accused persons knew to be likely to cause death; or
- (c) cause them with the intention of causing bodily injuries on Tan Kok Kiang and such bodily injuries intended to be inflicted were sufficient in the ordinary course of nature to cause death; or
- (d) commit the acts that are imminently dangerous that they must in all probability cause death or such bodily injuries as are likely to cause death.

H

I

- A [41] The learned DPP relied on sub-s (a), (c) and (d) of s 300 of the Penal Code to contend that there is an offence of murder being committed. In my view there is little doubt that by virtue of the severity of the injuries inflicted by the first and second accused, the prosecution has proven a prima facie case against them in respect of this issue as the injuries inflicted were sufficient in the ordinary course of nature to cause death which brings it within s 300(c) of the Penal Code. In this case it caused the death of the deceased.
- B

INGREDIENT 2

- C *What was the common object of the five accused at the illegal assembly at No 129, Taman Intersar, Lorong Rock 2 M, Kuching?*

- D [42] Two elements need to be proven. Firstly, the six accused had congregated at the alleged place bearing an address of No 129, Taman Intersar, Lorong Rock 2M, Kuching and secondly the common object of the accused was to murder the deceased.

- E [43] In respect of the first element, it was the contention of the counsel of all the accused that there was no direct evidence by any of the witnesses to confirm that the house in which the six accused had congregated has the address as stated in the charge. This was conceded by the learned DPP who however submitted that PW26, the investigation officer, obtained the address after being led to the alleged house by the second accused. This evidence was not seriously challenged by the defence and in my view the house referred to as the alleged place is the house as stated in the charge. Even if I am wrong in my conclusion, it does not help the defence as the charge can be amended to 'a house behind Timberland Medical Center'.
- F

- G [44] As for the second element, I need to address the issue of what and how the court determines the common object of the unlawful assembly. Guidance can be obtained from the case cited by Mr Albert Tang and this is what the learned judge in the Indian Supreme Court case of *State of Punjab v Sanjiv Kumar & Ors* Case No 822–825 of 2001 said:
- H

- I 9 Common object is different from a common intention as it does not require a prior concert and a common meeting of minds before the attack. It is enough if each has the same object in view and their number is five or more and that they act as an assembly to achieve that object. The common object of an assembly is to be ascertained from the acts and language of the members composing it, and from a consideration of all the surrounding circumstances. It may be gathered from the course of conduct adopted by the members of the assembly. What the common object of the unlawful assembly is at a particular stage of the incident is essentially

a question of fact to be determined, keeping in view the nature of the assembly, the arms carried by the members, and the behaviour of the members at or near the scene of the incident.

A

[45] From my discussion on the first ingredient, one can surmise that there was no evidence to show that all the accused were actively involved in causing the severe injuries to the deceased, and thus safely can conclude that there was not a common object to murder the deceased. There was no evidence that apart from the first and second accused the other accused were carrying any dangerous weapons during the chase. The evidence was also not very clear as to the participation of the third, fourth, fifth and sixth accused in the chase. Further if the common object is to commit murder, common sense would dictate that they would not do it in broad daylight and in a public place. The evidential value of the weapons tendered in court is neither here nor there in that apart from the parang they were not linked to any of the accused. In fact the court could draw unfavourable inference against the prosecution in that there are other culprits who are still at large. There is evidence in court stating that there were four unidentified Dayaks who were involved in the incident and were never arrested for investigation. It could be that the four Dayaks were the ones carrying the weapons and together with the first and second accused were the active participants in inflicting the injuries on the deceased.

B

C

D

E

[46] The only evidence on this issue was from PW17 and PW19 who never heard what was discussed between the accused at the alleged place. The fact that the first to fifth accused were at both coffee shops and at Bau though suspicious do not amount to a prima facie case against the accused on the charge laid.

F

CONCLUSION

[47] In view of my conclusion on the above issues, in respect of the third, fourth, fifth and sixth accused, I find that the prosecution has failed to prove a prima facie case against them, hence they are discharged and acquitted of the amended charges laid against them.

G

H

[48] As for the first and second accused, I find that the prosecution has failed to prove a prima facie case against them on the amended charge but I find that the evidence adduced disclosed a prima facie case against them on the following charge which reads as follows:

I

That you jointly and in furtherance of the common intention of you all on the 17th day of February 2005, at about 2.00 to 5.00 pm, at No 80 Lot 105 Jalan Batu Kawa, Kuching, in the State of Sarawak, committed murder by causing the death of Tan Kok Kiang (M), 40 years old, and you thereby committed an offence punishable under s 302 of the Penal Code read with s 34 of the same Code.

A [49] Accordingly I call on the first and second accused to enter their defence to the charge amended by me.

Order accordingly.

B Reported by Andrew Christopher Simon

C

D

E

F

G

H

I